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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 07-0157 and AF 09-0688

FAX - FILED

JAN 04 2011

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN RE PROPOSED RULE CHANGES TO THE
MONTANA RULES OF CIVIL PROCEDURE
AND THE MONTANA RULES OF
PROFESSIONAL CONDUCT TO ENCOURAGE
LIMITED SCOPE REPRESENTATION (LSR) IN
MONTANA.

WRITTEN COMMENT

SUBMITTED BY MICHELE L. SNOWBERGER,
BELGRADE CITY JUDGE

I am the Belgrade City Court Judge, a Court of Limited Jurisdiction. I am also a member of the Commission on Self Represented Litigants and a member of the sub-committee on limited scope representation ("LSR") that proposed the amendments to the Rules of Civil Procedure and the Rules of Professional Conduct. I write in support of the proposed rule changes.

I support the comments submitted by the Honorable Judge Russell Fagg and by Sue Talia.

I will address several issues that have been raised in the opposition comments.

1. The legal profession is no longer a "profession" and limited scope representation marks the end of the golden era of legal practice.

I have been a licensed attorney since 1988. I am part of one of the greatest professions: one that holds loyalty, diligence, and competence as core principals. We assist our clients in resolving issues—whether drafting a will, a contract for the sale of timber, or defending an individual charged with a crime. Attorneys have used their skill to address horrific abuses. We

have seen great strides in our society because an attorney decided that he would take on that controversial case. Prime examples of unfettered commitment to seeking justice are Supreme Court Justice Robert Jackson's work in the Nuremburg trials and Justice Thurgood Marshall's work in civil rights.

Our profession has changed and will continue to do so. We must continue to examine how we deliver legal services—what do our clients want from us? How can we provide better service to them? If we remain in the past, we will be left behind. When email first came out, many attorneys refused to utilize it because it was “unprofessional.” Now, many of us have “paperless” offices, utilize cloud computing, and engage in social networking. With the advent of these electronic tools also came potential implications to clients and attorneys. Even if an attorney declined to use modern technologies, they still have to become familiar with them. For example, how do you examine electronic records for discoverable information? Or, how do you protect your own electronic data from hackers. Consequently, guidelines and rules have and will continue to be developed to keep pace with changes and innovations utilized in the practice of law. The answer is not to restrict the use of these tools, but rather to implement necessary safeguards to protect both the client and attorney. These changes do not diminish our profession, but rather enrich it.

LSR is another tool for attorneys to use when providing legal services to our clients. LSR is not only for those who cannot afford full service representation, but for those clients who will demand new partnership opportunities with their attorneys.

2. LSR might be acceptable for “low income” individuals—those who cannot afford full service representation and who should be satisfied with a sub-standard level of care and competence—but not for those who can “afford” full representation.

I find this thread of argument within the submitted comments to be misguided. An attorney cannot be less diligent, loyal, or competent, just because a person is of limited financial means. LSR does not distinguish between those who can pay for full representation and those who cannot. In the current rules, LSR is not limited to a certain economic class.

An attorney should have a frank discussion with the potential client about whether LSR is appropriate for the client and the legal matter. The attorney should carefully discuss the ramifications of LSR with the client. LSR may only be provided when a client gives informed consent.

If the proposed rule changes go into effect, an attorney will not be required to provide LSR. An individual attorney may still limit their practice to full representation only. But, the proposed rules do provide a greater level of guidance than is currently contained in the rules.

3. LSR will permit self represented litigants to access the courts and thus clog our system.

I find this argument non-persuasive. I reject the notion that it is better to deny access to our courts than to permit LSR and give an individual the means to equal access to justice. I also firmly believe that an individual who has access to an attorney under an LSR agreement will be better able to present their issues in court. As a Court of Limited Jurisdiction Judge (“COLJ”), I understand on a deeply personal basis the impact of self represented litigant’s (“SRL”) on the court system. COLJ have the greatest number of cases and greatest number of SRL’s. I have

seen what happens when a SRL does not understand the basics of evidence and how frustrating this can be to the individual and to me. I have also seen the empowerment when the SRL understands the process and is able to properly present their case, even if they do not win.

Furthermore, LSR is not limited to litigation. A LSR agreement might have an attorney draft a demand letter for the client to sign or that an attorney give negotiation points for an employment contract.

4. Anonymous pleading preparation is a fraud on the court.

Assisted document preparation is one of the more controversial aspects of LSR. Even though there is much disagreement as to the attorney's role in document preparation, there are several safeguards in place. A SRL is bound by Rule 11 in filing pleadings. And, if a pleading is false or wholly unwarranted, the SRL may be sanctioned. Belgrade City Court has had documents that were filed by a SRL that were obviously drafted by an anonymous attorney. I have always silently thanked these attorneys. The pleadings provide the court with needed structure, facts and most importantly law. Many times I have wished that a SRL would have been assisted by counsel in their pleading preparation.

5. LSR will lead to greater work for the opposing counsel.

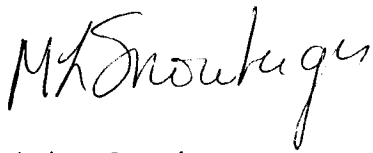
In my 20 plus years as an attorney, a great deal of that time was spent in the courtroom as either a trial attorney or a judge. I certainly have seen quite a bit of meritless pleadings, including motions to dismiss and requests for sanctions for discovery violations—and none of these involved a SRL.

It is possible that in certain cases LSR will lead to greater work by opposing counsel. But, this does not mean that the work is without merit. And, I believe that an attorney who is

assisting in document preparation or coaching will assist in the efficient use of limited judicial resources.

Thank you for the opportunity to comment on the proposed rule changes. Again, I urge the court to adopt the proposed rule changes.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "M. L. Snowberger". The signature is written in a cursive, flowing style with a large, prominent "M" and "S".

Michele L. Snowberger
Belgrade City Judge